

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. C94-1023
)	
v.)	Hon. Michael J. Melloy
)	
MERCY HEALTH SERVICES and)	
FINLEY TRI-STATES HEALTH)	Expedited Relief Requested
GROUP, INC.,)	
)	Oral Argument Requested
Defendants.)	
)	

**United States' Renewed Objection
To An Expedited Trial On The Merits
And Motion For Appropriate Relief**

In light of defendants' failure to work with the United States in good faith to narrow the issues truly in dispute, and the resulting need for the United States to conduct more discovery, call more trial witnesses, and do more extensive trial examination of those witnesses than anticipated, we ask this Court to grant appropriate relief of either: (i) postponing the trial, currently scheduled to begin September 12, for at least 90 days and allotting at least an additional week for the trial; or (ii) limiting the September hearing to a preliminary injunction hearing only. The reasons for this Motion are set forth in the accompanying Memorandum.

For several reasons, we do not believe this is a motion "relating to depositions or other discovery" within the meaning of Local Rule 14(e): (i) this is a motion to continue the trial or

limit the scope of the September hearing, and hence it is not a discovery motion; (ii) this Motion does not seek to compel any discovery or impose any discovery sanctions, which we recognize is a matter for the Magistrate; and (iii) although the event giving rise to this Motion is defendants' response to the United States' requests for admission, those requests were in substance and name "proposed stipulations," which also happened to be styled as "requests for admission" for the sake of convenience and to set an outer response deadline. As a result, the "meet and confer" and affidavit requirements of Local Rule 14(e) and Fed. R. Civ. P. 37(a)(2)(A) should not apply.

In any event, as explained in the accompanying Memorandum, the United States effectively met those requirements by asking defendants to contact us if there were any stipulation they would be inclined to agree to but for some semantic issue, and by asking defendants to explain any denials so that any such proposed stipulations could be altered to make them acceptable. Defendants snubbed both these invitations by making the most semantic objections imaginable and by categorically refusing to suggest any alterations. See Memorandum, Tab A (enclosing United States' proposed stipulations, cover letter, and defendants' response).

Finally, while what happened here is the most dramatic example, it is but the latest in a series of defendants' actions that have thwarted our trial preparation at every turn. Although we are not in this Motion seeking the Court to compel defendants to comply with any discovery request (we are taking up such issues

with the Magistrate), it is worth noting that defendants (after pressing for an early trial date and an order for expedited discovery) have, among other things: (i) been late in each one of their document productions (indeed, we are still waiting for documents long overdue); (ii) been late in answering several important interrogatories; (iii) objected categorically to discovery relating to their possibly collusive conduct (their exchange of prospective wages for nurses), which is relevant under the Rockford decision; (iv) objected to third-party discovery served by the United States as requiring responses too soon (i.e., within 14 days), despite there being no objection from the third parties themselves; and (v) refused to answer any more than 30 interrogatories.

The United States requests both expedited treatment under Local Rule 14(m) and oral argument of this Motion.

DATED: August 4, 1994

Respectfully submitted,

Stephen J. Rapp
United States Attorney

By: _____
Lawrence D. Kudej
Assistant United States Attorney
Northern District of Iowa
P.O. Box 74950
Cedar Rapids, Iowa 52407
Tel: (319) 363-0091
Fax: (319) 363-6110

Mary Beth McGee
Eugene D. Cohen
Jon B. Jacobs
U.S. Department of Justice
Antitrust Division
555 4th Street, N.W., Room 9421
Washington, D.C. 20001
Tel: (202) 307-1037
Fax: (202) 514-1517